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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Accelerated Docket for Complaint) CC Docket No. 96-238
Proceedings)

TO: The Common Carrier Bureau and
The Competition Enforcement Task Force

COMMENTS OF TELEPORT COMMUNICATIONS GROUP INC.

Teleport Communications Group Inc. ("TCG") hereby submits comments in the above-referenced proceeding.¹ TCG supports efforts to handle complaints in a swift and efficient manner that gives parties an opportunity to present their cases directly to a decisionmaker.

In its recent Report and Order issued in this docket,² the Commission adopted a number of important reforms designed to facilitate the processing of formal complaints within specific time periods prescribed under the Telecommunications Act of 1996. The Common Carrier Bureau ("Bureau") and the Competition Enforcement Task Force ("Task Force") subsequently issued for comment a number of proposals for an alternative form of complaint adjudication,

1. "Common Carrier Bureau Seeks Comment Regarding Accelerated Docket for Complaint Proceedings," Public Notice, CC Docket No. 96-238 (rel. December 12, 1997).

2. Implementation of the Telecommunications Act of 1996, Amendment of Rules Governing Procedures to be Followed When Informal Complaints Are Filed Against Common Carriers, CC Docket No. 96-238, Report and Order, FCC 97-396 (rel. November 25, 1997) ("Complaint R&O").

namely the "Accelerated Docket." Unlike the typical complaint process, the Accelerated Docket would permit parties a hearing-style process for presenting their respective cases. TCG offers the following proposals to ensure that, if adopted, the Accelerated Docket will be a fair and useful administrative tool for adjudicating any complaint.

1. Need for Accelerated Docket

The Public Notice seeks comment regarding the factors that may support the creation of a hearing-type, accelerated complaint process.³ Regardless of the details of the procedures that are adopted, there should be one underlying touchstone: the Accelerated Docket should be available as an option to complainants, and not as a mandatory process to which complainants may be subjected at the discretion of the Staff. This will help ensure that the benefits of the Accelerated Docket procedures will be realized in those instances where it is practical for the complainant to present its case within the abbreviated timeframes that would be required in such a proceeding.

In this regard, the Accelerated Docket procedures would be most effective in cases where oral presentation to the decisionmaker will lead to a better understanding of the issues presented. In a hearing, parties will have an immediate opportunity to respond to allegations or defenses that otherwise would merely be offered in paper pleadings.

3. Public Notice at 3.

2. Minitrials

The Bureau suggests that "[a]s much as possible, Accelerated Docket proceedings would be governed by the requirements announced in the Complaint R&O."⁴ In addition to the requirements set forth in the Complaint R&O, the Bureau also should require as part of an Accelerated Docket proceeding the submission of pre-filed testimony after the initial status conference and prior to the oral presentation before the factfinder. As TCG has found in numerous state proceedings, pre-filed testimony tends to expedite the hearing itself by focusing the issues to be addressed at the hearing. Pre-filed testimony also permits the complainant and defendant to dedicate much of the hearing presentation to cross-examination on the testimony filed. In instances where the timing of the initial status conference and the hearing do not permit the filing of the testimony in advance, this requirement could be waived.

4. Pre-Filing Procedures

The Bureau should clarify that pre-filing procedures for any complaint will include the complainant's obligation to request acceptance to the Accelerated Docket. If such a request is not specifically made, then the Accelerated Docket procedures should not be available for that particular complaint.

4. Id. at 2.

5. Pleading Requirements and 6. Status Conferences

To conduct an Accelerated Complaint proceeding within a sufficient time period to permit Commission review of the initial decision, the Bureau has proposed timeframes in which to submit pleadings and to conduct the initial status conference. The Bureau suggests that an answer would be required within seven calendar days of the filing of the complaint, and that the initial status conference would be held no later than fifteen calendar days after the filing of the complaint.⁵ TCG agrees that abbreviated timeframes such as these would be necessary to conduct an Accelerated Docket proceeding. However, even under an accelerated timeframe, Commission Staff must continue to ensure that pleadings continue to meet the current requirements, and that the utility of the initial status conference is not diminished.⁶

7. Damages

TCG agrees that liability and damages should be bifurcated in Accelerated Docket procedures. Bifurcation will permit the decisionmaker to focus on issues of liability. This will be especially important in the abbreviated timeframe in which the Accelerated Docket proceeding must be handled. In addition, bifurcation of liability and damages in the Accelerated Docket is consistent with the Commission's

5. Id. at 5.

6. In the Complaint R&O, the Commission revised regulations regarding pleading requirements to improve the content and utility of the pleading. Complaint R&O at ¶ 22. Similarly, the initial status conference is intended to "improve the ability of the Commission staff to render prompt decisions and order any necessary actions by the parties." Id. at ¶ 140.

treatment of these issues, where permitted, in a typical proceeding. The Commission found that "encouraging parties to separate their liability and damage claims into separate complaints is the most practical means to focus scarce resources on the determination of liability issues and, when necessary, granting prospective relief quickly."⁷ By following this course of action in the Accelerated Docket, parties will be able to focus their presentations on the threshold liability issues to be decided through a hearing-style proceeding.

For these reasons, TCG supports the creation of an Accelerated Docket proceeding. The Bureau should find that use of this proceeding should be conditioned upon the complainant's request, which will help ensure that the Accelerated Docket be employed only when most appropriate. In addition, the

7. Id. at ¶ 180.

Bureau should require that pre-filed testimony be included as part of the minitrial process, which will permit parties to focus the issues and evidence for the factfinder and to probe the evidence offered by an opponent during the minitrial.

Respectfully submitted,

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Dated: January 12, 1998

CERTIFICATE OF SERVICE

I, Dottie E. Holman, do hereby certify that a copy of the foregoing Comments was sent by hand-delivery this 12th day of January, 1998, to the following:

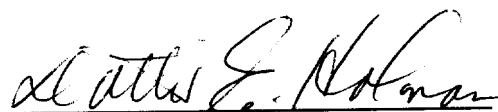
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